

COMMITTEE STATEMENT

LB 476

HEARING DATE: February 17, 1999

COMMITTEE ON: Judiciary

TITLE: (Janssen, Schellpeper, Hudkins, Tyson, Dw. Pedersen, Bruning, Smith, Schmitt, Wickersham, Engel, Robak, Quandahl) Adopt the Concealed Handgun License Act

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6	Yes	Senators Baker, Brashear, Connealy, Hilgert, Pedersen, Robak
2	No	Senators Bourne, Chambers

Present, not voting

Absent

PROPOSERS	REPRESENTING
Senator Ray Janssen	Introducer
Senator Stan Schellpeper	Self
Karl Dailey	Self
Terry Veazey	Self
Janice Spicha	Nebraska Council of Sportsmen
Russ Tooker	Self
OPPOSERS	REPRESENTING
Gregg Magee	Self
Larry Ball	Self
Kent Roompf	Self
Steve Grabowski	Nebraska Sheriffs' Association Nebraska Fraternal Order of Police
Craig Groat	Self
Elizabeth Carpenter	Social Action Committee of Unitarian Church – Lincoln
George Remmenga	Gun Owners of America
Eileen Durgin-Clinchard	Self
Tim Potter	Self
Susan Koneck	Self

COMMITTEE STATEMENT

Janet Bonet	Nebraskans for Peace
Gordon Peterson	Nebraska Association of Trial Attorneys
Mary Ann Krzemien	Springlake Neighborhood Association
Tom McBride	Epworth Village
NEUTRAL	REPRESENTING
Mark Brohman	Nebraska Game and Parks

SUMMARY OF PURPOSE AND/OR CHANGES:

Legislative Bill 476 would adopt the Concealed Handgun License Act to **permit individuals to obtain a license** that would permit the licensee **to carry a concealed handgun on or about his or her person** without violating Section 28-1202, which prohibits the carrying of concealed weapons.

Section 1 names the act.

Section 2 provides legislative findings.

Section 3 defines terms. “Handgun” is defined as any pistol or revolver designed to held and fired by the use of a single hand and which is incapable of firing more than a single round with a single pull of the trigger. Four categories of handguns are established.

Section 4 provides that an individual may obtain a license to carry a concealed handgun in accordance with the act.

Section 5 provides that an applicant shall apply for a license, under oath, on a form provided by the Nebraska State Patrol (Patrol). The Patrol shall adopt rules and regulations for distribution and receipt of applications. The Superintendent of Law Enforcement and Public Safety shall appoint one or more examiners and obtain facilities for administration of the application process.

The application shall include:

- The name, any prior names or aliases, address, date of birth, social security number, height, weight, gender, and race of the applicant;
- A statement that the applicant is in compliance with the requirements of section 7 of the act with respect to disqualification for licensure;
- A statement that the applicant has been furnished a copy of the act and is knowledgeable of its provisions;
- A conspicuous warning that the application is completed under oath and that making a false statement under oath is a Class IV felony.

COMMITTEE STATEMENT

The applicant shall submit to the Patrol:

- A completed application;
- A full set of fingerprints and a photograph taken by the Patrol;
- A nonrefundable application fee of \$75;
- A certificate of completion of a handgun safety course;
- A release that authorizes disclosure of information related to mental health commitments maintained by the Department of Health and Human Services;
- A completed form stating that the applicant has become knowledgeable about child endangerment with respect to handguns;
- The names, addresses, dates of birth and telephone numbers of two adult references.

The Patrol shall forward a copy of the application to the sheriff or chief law enforcement officer of the applicant's city or village. The sheriff or chief law enforcement officer may participate in the application process by submitting a voluntary report containing any information he or she feels may be pertinent.

The Patrol may deny a license if the sheriff or chief law enforcement officer submits a written statement that the applicant has been or is reasonably likely to be a danger to himself or herself, to others, or to the community at large as a result of the applicant's mental or psychological state or if the applicant is under a criminal investigation for an offense which would prohibit him or her from obtaining a license.

The Patrol shall issue a license if:

- The applicant is a resident of the United States and of Nebraska for at least one year;
- He or she is at least 21 years of age;
- He or she does not suffer from a physical infirmity which prevents the safe handling of a handgun;
- He or she is not ineligible to possess a firearm pursuant to federal law or by having been convicted of a felony;
- He or she has not been convicted of an offense involving violence the person or the threat or attempt of violence, unless at least three years have elapsed since a sentence set by the court has been fulfilled or at least three years have elapsed since the record has been sealed or expunged;
- He or she has not been committed, voluntarily or involuntarily, to any residential treatment facility as a result of the use of a controlled substance within the three-year period prior to the application or convicted of a misdemeanor involving controlled substances within the three-year period prior to the application;
- He or she has not been committed, voluntarily or involuntarily, to any residential treatment facility as a result of the abuse of alcohol or other substances or

COMMITTEE STATEMENT

- convicted of a second or subsequent “driving under the influence” offense within the three-year period prior to the application;
- He or she has not been acquitted because he or she was not responsible by reason of insanity unless the court has unconditionally released the applicant from further court-ordered treatment, has not been adjudicated mentally incompetent, is not receiving mental health treatment pursuant to a commitment order of a mental health board, has been discharged from such a commitment order for at least five years prior to the application or has not been committed to treatment as dangerous to self or others pursuant to being acquitted of an offense because he or she was found not responsible by reason of insanity and discharged from that commitment for at least five years prior to the application;
 - He or she has not had an adjudication of guilt set aside for any felony or for a misdemeanor involving violence or threats of violence against the person or controlled substances, unless three years have elapsed since conditions set by the court have been fulfilled or the record has been sealed or expunged;
 - He or she is not currently participating in a pretrial diversion program for any felony offense or a misdemeanor involving violence or threats of violence against the person or controlled substances and has not so participated in the three years prior to the application;
 - He or she has not been convicted of stalking;
 - He or she is not currently subject to a protection order, harassment protection order or foreign protection order and has not been subject to a protection order, harassment protection order or foreign protection order within the three years prior to the application and he or she has not been convicted of a violation of a protection order, harassment protection order or foreign protection order unless three years have elapsed since any conditions set by the court have been fulfilled or the record has been sealed or expunged;
 - He or she is not on probation, released from incarceration on parole or work release, or released from custody on bail or on his or her recognizance for any offense which would prohibit the applicant from obtaining a license;
 - He or she has not had a license revoked;
 - He or she does not use alcohol or other substances to the extent that his or her normal faculties are impaired on a chronic or habitual basis;
 - He or she desires a legal means to carry a concealed handgun for lawful security and defense purposes; and
 - He or she demonstrates competence and physical capability to use a handgun by successful completion of a training and safety course.

Section 8 provides that the Department of Health and Human Services shall furnish to the Patrol, upon request, only such information as may be necessary to determine the applicant’s status with respect to mental health commitment requirements of the act. The clerks of the various courts shall furnish to Health and Human Services within 30 days after the order all mental health commitment information necessary to set up and maintain the data base required.

COMMITTEE STATEMENT

Any person, agency or mental health board participating in good faith in the reporting or disclosure of information is immune from any liability that might result therefrom.

Any person who intentionally causes the Patrol to request mental health information without a reasonable belief that an application has been submitted shall be guilty of a Class II misdemeanor.

Section 9 provides that the Patrol shall, within 90 days after the receipt of the required items, issue the license or deny the application based solely on the grounds that (a) the information provided by the local sheriff or chief law enforcement officer demonstrates that the applicant would be likely to use a handgun unlawfully or (b) the applicant failed to meet the requirements of section 7 of the act. The Patrol shall check all available data bases, contact the references and take all other reasonable steps to ascertain whether the applicant meets the requirements of section 7 and whether the applicant would be likely to use a handgun unlawfully.

Section 10 provides that the 90 day period may be tolled pending final disposition of a proceeding that has not resulted in a final disposition. The Patrol shall adopt rules and regulations regarding criminal history background checks.

Section 11 provides that the Patrol shall prepare and publish minimum standards for handgun training and safety courses and instructors and for matters to be included therein.

Section 12 provides for the information to be included on the license, the expiration thereof and for renewal and duplicate licenses.

Section 13 provides that a licensee who is in compliance with his or her license and the act is exempt from the prohibition of carrying a concealed handgun currently contained in Section 28-1202 and may carry a concealed handgun on or about his or her person, in his or her purse, briefcase or portfolio, or in an otherwise readily accessible location but hidden from view.

Section 14 provides for procedures for renewal of licenses and a renewal fee of \$45.

Section 15 requires a licensee to notify the Patrol of a change in address or that his or her license was lost or destroyed within 30 days of such occurrence. Failure to do so is an infraction and shall be fined up to \$25.

COMMITTEE STATEMENT

Section 16 provides that if a license is reported as lost or destroyed the license becomes invalid and the licensee may obtain a duplicate or substitute license for a \$15 fee.

Section 17 provides that if the Patrol becomes aware of information indicating a licensee has become ineligible to hold a license, the Patrol shall suspend such license and may revoke such license after a hearing. A license may be suspended for not more than 12 months if the licensee carried a concealed handgun in violation of the requirements of Section 19 of the act, unless the licensee has been convicted of such within the previous 12 months, in which case the license may be suspended for a period of not more than 24 months.

Section 18 provides for administrative and judicial remedies in cases of denial, suspension or revocation of a license.

Section 19 provides that a licensee shall carry his or her license and his or her driver's license or identification card at any time he or she carries a concealed handgun. The licensee shall display both when asked to do so by a peace officer or emergency services personnel.

Whenever a licensee is contacted by a peace officer or by emergency services personnel, the licensee shall immediately inform the peace officer or emergency services personnel that the licensee is carrying a concealed handgun.

During contact with a licensee, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact. The licensee shall submit to the order.

When a peace officer has determined that the licensee is not a threat and if the licensee has not committed any other violation, the peace officer shall return the handgun. When emergency services personnel have determined that the licensee is not a threat and if the licensee is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the licensee.

A licensee shall not carry concealed handgun into any:

- Police, sheriff, or Patrol station or office;
- Detention facility, prison or jail;
- Courtroom or building which contains a courtroom;
- Polling place during a bona fide election;
- Meeting of the governing body of a political subdivision;
- Meeting of the Legislature or a committee thereof;
- Financial institution;
- Professional, semiprofessional, or collegiate athletic event;

COMMITTEE STATEMENT

- School, school grounds, school-owned vehicle or school-sponsored activity or athletic event;
- Place of worship;
- Emergency room or trauma center;
- Political rally or fundraiser;
- Portion of an establishment which is devoted to the sale of alcohol for consumption on the premises;
- Place where the possession or carrying of a firearm is prohibited by state or federal law; or
- Place where the person, persons, entity, or entities in control of the property have prohibited licensees from carrying concealed handguns onto the premises.

A financial institution may authorize its security personnel to carry concealed handguns so long as each is in compliance with the act.

The person, persons, entity or entities in control of any property may prohibit licensees from carrying concealed handguns onto his, her, their or its premises and an employer may prohibit employees from carrying concealed handguns onto the premises of the employer. If the premises are open to the public, a licensee does not violate this section unless the person, persons, entity or entities in control of the premises have posted conspicuous notice or have made a request that the licensee remove the handgun. An employer may prohibit employees or other persons who are licensees from carrying concealed handguns in vehicles owned by the employer.

A licensee shall not carry a concealed handgun while he or she is consuming alcohol or while alcohol or controlled substances are in his or her bloodstream.

Any time the discharge of a handgun carried by a licensee results in injury to a person or damage to property, the licensee shall make a report to the Patrol.

A licensee who violates the provisions of Section 19 related to contact with a peace officer or emergency services personnel is guilty of a Class I misdemeanor. A licensee who violates the other provisions of Section 19 is guilty of a Class III misdemeanor. A second or subsequent violation is a Class I misdemeanor.

Section 20 provides that neither the state nor any political subdivision shall be criminally or civilly liable for acts committed by a licensee.

Section 21 requires the Patrol to maintain a listing of all licensees and make such available upon request to all law enforcement agencies.

Section 22 provides that fees shall be remitted to a cash fund for the cost of processing applications and to repay the General Fund for any appropriation for start-up costs.

COMMITTEE STATEMENT

Section 23 provides that no application shall be accepted until January 1, 2000 or until such time as a system of maintaining a listing of licensees and pertinent information regarding licensees is installed and operational.

Section 24 creates a Law Enforcement Advisory Board.

Section 25 provides that a licensee may be charged with violating Section 28-707 (child endangerment) if a child gains access to and discharges a handgun owned by the licensee unless the discharge was in lawful defense of person or property or the child obtained the handgun by unlawful means.

Section 26 provides that a licensee who carries a concealed handgun is guilty of a Class II felony if he or she uses such handgun to commit a felony, a Class IV felony if he or she uses such handgun to commit a misdemeanor involving bodily injury or threat thereof, a Class I misdemeanor if he or she uses such handgun to commit a misdemeanor involving a controlled substance, and a Class II misdemeanor if he or she uses such handgun to commit any other misdemeanor.

Sections 27, 28, 29 and 30 preempt the authority of municipalities to regulate concealed weapons inconsistent with the act.

Section 31 amends Section 28-915.01 as to making false statements under oath to heighten the penalty for such a statement on an application for a license.

Section 32 amends Section 28-1202 as to carrying of a concealed weapon to harmonize with the act. Subsection (2) thereof would eliminate the “affirmative defense” under Section 28-1202 as of the effective date of licensure under the act.

Law enforcement officers are exempt from the requirements of Section 28-1202 when off duty at the discretion of their supervisor, if such agency has written procedures therefor. On-duty law enforcement officers are exempt from the requirements of Section 28-1202 at the discretion of his or her supervisor.

Explanation of Amendment

The committee amendment makes several changes to the bill.

Language is stricken that limited the definition of “peace officer” with respect to Game and Parks Commission conservation officers to when such officers are in areas under the control of the Game and Parks Commission. With the amendment, conservation officers will always be within the definition of “peace officer.”

The application fee is increased from \$75 to \$100.

COMMITTEE STATEMENT

The Patrol is required to send a copy of an application to the appropriate troop area commander of the Patrol in addition to the appropriate sheriff and chief law enforcement officer.

Language is changed to permit any peace officer to submit a voluntary report regarding an applicant and to include “copies of offense reports, complaints or investigative reports” together with a report.

Language is added to provide that a person can be denied a permit if such person has been “voluntarily admitted under emergency protective custody” to a residential treatment facility as a result of abuse of controlled substances or alcohol. Additional technical drafting amendments to the provisions are made.

An amendment is made to Section 8 to clarify the time periods within which court clerks must provide mental health commitment information to the Department of Health and Human Services.

In the provisions regarding the locations in which concealed handguns may not be carried by a licensee, the language “portion of an establishment which is primarily devoted to the sale of alcohol for consumption on the premises” is changed to “the room or rooms in which alcoholic liquor is dispensed of an establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises.”

Reports of discharges of a handgun carried by a licensee that results in injury to a person or damage to property, must be reported to the Patrol “forthwith.”

The provision stating that application materials received by the Patrol are to be confidential is modified to permit the Patrol to interview on a confidential basis persons who are mentioned in reports or statements submitted to the Patrol by local law enforcement agencies.

The date upon which applications are to be accepted is modified to require that the Superintendent of Law Enforcement and Public Safety certify to the Governor that a system of maintaining a listing of licensees and pertinent information is installed and operational.

The date upon which the exception for licensees to the prohibition on the carrying of concealed weapons takes effect is changed to 90 days after the superintendent certifies that such system is installed and operational, which is also the date upon which the Patrol may begin to accept applications for licenses.

Senator

COMMITTEE STATEMENT